



DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2022-0199]

RIN 1625-AA11

Regulated Navigation Area; Environmental Protection Agency Superfund Site, Point Ruston, Commencement Bay, Tacoma, WA

AGENCY: Coast Guard, DHS.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing a permanent regulated navigation area (RNA) for all navigable waters within the area of lines drawn from Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA. This RNA is necessary to preserve the integrity of protective sediment caps placed in multiple areas within this waterway as part of the remediation process at the Commencement Bay, Nearshore/Tideflats Environmental Protection Agency (EPA) Superfund Cleanup Site. This RNA prohibits activities which would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment cap, unless authorized by the Captain of the Port (COTP) Puget Sound or their Designated Representative. The RNA will not affect vessels transiting or navigating within this waterway.

DATES: This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2022-0199 in the search box and

click "Search." Next, in the Document Type column, select “Supporting & Related Material.”

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or email Mr. Rob Nakama, Sector Puget Sound Waterways Management Division, U.S. Coast Guard; telephone 206-217-6089, email SectorPugetSoundWWM@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
EPA	Environmental Protection Agency
FR	Federal Register
NPRM	Notice of proposed rulemaking
RNA	Regulated Navigation Area
§	Section
U.S.C.	United States Code

II. Background Information and Regulatory History

On December 6, 2021, the United States EPA Region 10 notified the Coast Guard that it requests the establishment of an RNA or “No Anchor Zone” for commercial vehicles within the Operable Unit 6 (OU6) Asarco sediment cap in the Commencement Bay Nearshore/Tideflat (CB-NT) Superfund Site. This RNA will prohibit activities that could disrupt the integrity of the engineered sediment caps that have been placed within the OU6 Asarco sediment cap. These activities include vessel grounding, anchoring, dragging, trawling, spudding or other such activities that would disturb the integrity of the sediment caps.

In response, on June 8, 2022, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Regulated Navigation Area; Environmental Protection Agency Superfund Site, Point Ruston, Commencement Bay, Tacoma, WA” (87 FR 34834). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this RNA. During the comment period that ended August 8, 2022, we received one comment.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Captain of the Port Puget Sound (COTP) has determined that establishing a permanent regulation restricting activities such as anchoring, dragging, trawling, or other activities will prevent disrupting the integrity of sediment caps located within the Commencement Bay Nearshore/Tideflat, WA.

IV. Discussion of Comments, Changes, and the Rule

As noted above, we received one comment on our NPRM published June 8, 2022. The comment was in support of the proposed rule. There are no changes in the regulatory text of this rule from the proposed rule in the NPRM.

This rule establishes a RNA to prohibit certain activities including anchoring, dragging, trawling, and other activities that involve disrupting the integrity of sediment caps located within the Commencement Bay Nearshore/Tideflat, WA. No vessel or person would be permitted to perform the aforementioned activities without obtaining permission from the Captain of the Port, Puget Sound (COTP) or a designated representative.

The RNA would include all waters within Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA, encompassed by a line connecting the following points beginning at 47°18'12.0" N, 122°30'26.0" W onshore, thence 240 feet to position 47°18'13.0" N 122°30'22.0" W offshore, thence 2,900 feet to position 47°17'52.0" N, 122°29'53.0" W offshore, thence 500 feet to position 47°17'49.0" N 122°29'59.0" W onshore. These coordinates are based on World Geodetic System (WGS 84).

The prohibition for anchoring, dragging, trawling, or other activities that involve disrupting the integrity of sediment caps would not apply to vessels or persons engaged in activities associated with remediation efforts in the Commencement Bay

Nearshore/Tideflat (CB-NT) Superfund Sites, provided that the COTP is given advance notice of those activities by the EPA. Vessels may otherwise transit or navigate within this area without reservation.

V. Regulatory Analyses

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the fact that the RNA is limited in size and will not limit vessels from transiting or using the waters covered, except for specified activities that may damage the engineered sediment caps.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the RNA may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the FOR FURTHER INFORMATION CONTACT section. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132 Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a permanent regulated navigation area for all navigable waters within the area of lines drawn from Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA. This rule prohibits activities that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and other participants in the EPA Superfund Cleanup Site. It is

categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165--REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 46 U.S.C. 70034, 70051; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 00170.1, Revision No. 01.2.

2. Add § 165.1344 to read as follows:

§ 165.1344 Regulated Navigation Area; Commencement Bay Nearshore/Tideflat Superfund Site, Commencement Bay, Tacoma, WA.

(a) *Regulated Areas.* The following area is a regulated navigation area (RNA): All waters within Dune Park downward to the Point Ruston Historic Ferry dock on Commencement Bay, WA, encompassed by a line connecting the following points beginning at 47°18'12.0" N, 122°30'26.0" W onshore, thence 240 feet to position

47°18'13.0" N 122°30'22.0" W offshore, thence 2,900 feet to position 47°17'52.0" N, 122°29'53.0" W offshore, thence 500 feet to position 47°17'49.0" N 122°29'59.0" W onshore. These coordinates are based on World Geodetic System (WGS 84).

(b) *Regulations*. In addition to the general RNA regulations in § 165.13, the following regulations apply to the RNA described in paragraph (a) of this section.

(1) Prohibited activities include those that would disturb the seabed, such as anchoring, dragging, trawling, spudding, or other activities that involve disrupting the integrity of the sediment caps installed in the designated regulated navigation area, pursuant to the remediation efforts of the U.S. Environmental Protection Agency (EPA) and other participants in the EPA Superfund Cleanup Site. Vessels may otherwise transit or navigate within this area without reservation.

(2) The prohibition described in this section does not apply to vessels or persons engaged in activities associated with remediation efforts in the Middle Waterway Superfund Sites, provided that the Captain of the Port (COTP) Puget Sound is given advance notice of those activities by the EPA.

Dated: September 28, 2022.

M. W. Bouboulis,
Rear Admiral, U.S. Coast Guard,
Commander, Thirteenth Coast Guard District
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